

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY FLORIDA

Case No.: _____

STEVE PINCKET,

Plaintiff,

vs.

KEN DETZNER, Secretary of the State of Florida;
and **RICK SCOTT**, Governor of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Steve Pincket ("Pincket") sues Defendants Rick Scott and Ken Detzner states as follows:

Introduction

1. This is an action through which Pincket seeks declaratory and injunctive relief against Defendants, Ken Detzner, in his official capacity as Secretary of State (hereinafter referred to as "Division of Elections"); and Rick Scott, in his official capacity as Governor ("Scott") (herein collectively "Defendants"), to preclude Pincket from qualifying for and seeking election to the office of Circuit Judge, Group Six for the Tenth Judicial Circuit Court as guaranteed under Article V, Section 10 of the Constitution of the State of Florida.

Jurisdiction and Venue

2. This action arises under Article V, Sections 10 and 11, of the Constitution of the State of Florida, and Chapter 105, Florida Statutes.

3. This Court has jurisdiction of this action under and by virtue of Florida Statutes Chapter 86, Florida Statutes.

4. This Court is authorized to grant Pincket's prayer for relief, pursuant to Section 86.081, Florida Statutes.

5. This Court is authorized to grant declaratory judgment pursuant to Chapter 86, Florida Statutes, and to issue preliminary and permanent injunctive relief.

6. Venue is proper within this judicial circuit, specifically Leon County. Each and all of the acts alleged herein were done by Defendants within Leon County.

The Parties

7. Pincket is a Florida attorney in good standing with The Florida Bar. He is qualified by his residence and his experience to be a candidate for the office of his circuit judge the Tenth Judicial Circuit.

8. Detzner is the Secretary of State of Florida and is the chief elections officer of the State of Florida. He is the head of the Department of State, which includes the Division of Elections. The Division of Elections is responsible for qualifying candidates seeking election to the office of circuit judge.

9. Scott is Governor of the State of Florida and is charged with filling judicial vacancies pursuant to Article V, Section 11 of the Constitution of the State of Florida.

Facts

10. The constitutional issue in this case arose from the resignation of Judge Olin Shinholser, a sitting circuit judge in the Tenth Judicial Circuit. Specifically, the issue arose from the manner in which he chose to resign; that is, by submitting a formal resignation before the start of the statutory qualifying period and then specifying an effective date of the resignation after the November general election and just four business days before the expiration of his term in office. By resigning in this way, Judge Shinholser sought to convert what would have been a judicial election into what is now a judicial appointment.

11. On April 1, 2016, Judge Shinholser wrote a letter to Governor Scott stating that he was resigning his office. (Exhibit "A") He stated in the letter that he was resigning before the qualifying period and leaving a physical vacancy in the office between the effective date of the resignation on December 26, 2016, and the end of his term on January 2, 2017.

12. The resignation letter reads as follows:

April 1, 2016

Dear Governor Scott, I have had the honor and privilege to serve the citizens of this state for the last 36 years and 3 months. I served as an assistant state attorney for 10 years. In January, 1990, I began serving as County Judge for Highlands County. I served in that role until September 2002, when I was appointed to the Circuit bench wherein I have served until now.

I am formally announcing my retirement effective 11:59 PM on December 26, 2016. This date precedes the end of my term. It is my desire and request that my successor be appointed by you. While there are certainly debatable points as to the pros and cons of succession by appointment verses election, it is my belief based upon year of observation that the appointment process is superior to the election process in the judicial context.

Please formally accept my retirement as of the date indicated above.

Thank you.

Sincerely,

Olin W. Shinholser
Circuit Judge

(Exhibit "A")

13. Scott accepted Judge Shinholser's resignation on April 13, 2016, specifically noting in his acceptance letter that the resignation would not become effective until December 26, 2016.

(Exhibit "B")

14. The qualifying period for judicial candidates commenced at noon on May 2, 2016 and closed at noon on May 6, 2016. On May 4, 2016, Pincket filed his qualifying papers for the seat in Group 6 of the Tenth Judicial Circuit (Exhibit "C"), the seat now held by Judge Shinholser. Pincket also tendered a check for the qualifying fee. (Exhibit "D")

15. Pincket received a letter the same day from Kristi Reid Bronson, the Chief of the Bureau of Election Records in the Division of Election Records. (Exhibit "E") Ms. Bronson stated in the letter that the Secretary of State was declining to accept the petitioner's qualifying documents for the judicial election because the set in Group 6 for the Tenth Judicial Circuit will require an appointment by the Governor.

Applicable Law

16. The actions of Division of Elections in declining to accept Pincket's qualifying documents for the judicial election in Group 6 for the Tenth Judicial Circuit is contrary to the requirements of Article V, Sections 10 and 11 of the Constitution of the State of Florida.

17. The Florida Supreme Court addressed a similar judicial vacancy in *Spector v. Glisson*, 305 So.2d 777 (Fla. 1974). Prior to the qualifying period Justice Richard W. Ervin gave notice to the Secretary of State that he would leave the bench that following January. Nonetheless the Court restated the long held policy that the elective process is primary:

We feel that it necessarily follows from this consistent view and steadfast public policy of this state as expressed above, that if the elective process is available and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office by a vote of the people at the earliest possible date. Thus, the elective process retains the primacy which has historically been accorded to it consistent with the retention of all powers in the people, either directly or through their elected representatives and their legislature, which are not delegated, and also consistent with the priority of the elective process over the appointive powers except where explicitly otherwise provided. We thereby continue the basic premise of our democratic form of government, that it is a 'government of the people, by the people, and for the people' ...*Spector* at 782 citing *Klein v. Schulz*, 87 So.2d 406 (Fla. 1956).

18. *Spector* controls over the conflicting decision of the First District Court of Appeal, *Trotti v. Detzner*, 147 So. 3d 641 (Fla. 1st DCA 2014), and *Spector* compels that "if the elective process is available, and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office by vote of the people at the earliest possible date." 305 So. 2d at 782.

19. Florida has a long history of favoring elections over appointment of judicial officers. In *Pleus v Crist*, the Florida Supreme Court reaffirmed that, "[t]he nominating commission process in section 11 of article 5 is really a restraint upon the Governor- not a new process for removing from the people their traditional right to elect their judges" 14 So. 3D 941, 944 (Fla. 2009), quoting *Spector*, 305 So. 2d at 783.

Need for Declaratory and Injunctive Relief

20. The Division of Elections' actions in declining to accept Pincket's qualifying documents for the judicial election in Group 6 for the Tenth Judicial Circuit because that office will

require an appointment by the Governor violates the requirements of Article V, Sections 10 and 11 of the Constitution of the State of Florida.

21. Pincket has been deprived of the opportunity to qualifying for and seeking election to the office of Circuit Judge, Group Six for the Tenth Judicial Circuit Court as guaranteed under Article V, Section 10 of the Constitution of the State of Florida. More significantly, the electors of the Tenth Judicial Circuit have been deprived of the opportunity “to fill any available office by vote of the people at the earliest possible date” as required by *Spector*.

22.. An actual controversy exists between the parties involving substantial constitutional issues which require resolution by this Court, in that Defendants’ actions, on its face and as applied, violates the Florida Constitution. The recent order of the Florida Supreme Court in *Pincket v. Detzner*, Case No. SC16-768 (Fla. June 3, 2016) does not obviate the need for declaratory and injunctive relief in this cause. (Exhibit “F”)

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that actions of the Division of Elections’ actions in declining to accept Pincket’s qualifying documents for the judicial election in Group 6 for the Tenth Judicial Circuit because that office will require an appointment by the Governor violates the requirements of Article V, Sections 10 and 11 of the Constitution of the State of Florida;

B. Order that the Division accept Pincket’s qualifying documents for election in Group 6 for the Tenth Judicial Circuit in the 2016 election cycle and place his name of list of qualified candidates for election in Group 6 for the Tenth Judicial Circuit; and

C. Grant such other and further relief as the Court may deem necessary or appropriate.

Respectfully Submitted,

JAMES AND SNIDER

By: /s/ Nick James

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